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August 21, 2000

**Via HAND-DELIVERY**

Magalie Roman Salas, Esquire

Secretary

Federal Communications Commission

445 12<sup>th</sup> Street, S.W., Room TW-B204

Washington, D.C. 20554

**RE: Reply to Opposition to Petition for Reconsideration or  
 Alternative Rulemaking  
 KJCS(FM), Nacogdoches, Texas  
 MM Docket # 99-257; RM No. 9683**

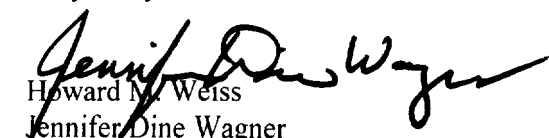
Dear Ms. Salas:

Radio Licensing, Inc., licensee of KJCS(FM), Nacogdoches, Texas, hereby files an original and four copies of its Reply to Opposition to Petition for Reconsideration or Alternative Rulemaking of the decision to allocate Channel 278A to Centerville, Texas.

Please date-stamp the attached confirmation copy marked 'Please Stamp and Return this Copy to Fletcher, Heald & Hildreth' and return it with the courier.

If you have any questions or need additional information, kindly contact the undersigned.

Very Truly Yours,

  
 Howard M. Weiss  
 Jennifer Dine Wagner  
 Counsel for Radio Licensing, Inc.

enc. (6)

cc: Mr. William Vance (w/enc.)  
 Mr. John A. Karousos  
 Peter Doyle, Esq.  
 Mr. Dale Bickel

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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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AUG 21 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re Reconsideration of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 99-257
Table of Allotments	)	RM No. 9683
FM Broadcast Stations to	)	
Allot Channel 278A to	)	
Centerville, Texas	)	
	)	
Or, in the Alternative	)	
	)	
In the Matter of	)	MM Docket No. _____
Amendment of Section 73.202(b)	)	RM No. _____
Table of Allotments,	)	
FM Broadcast Stations	)	
Centerville, Texas	)	

To: Chief, Allocations Branch, Mass Media Bureau

**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION**  
**OR ALTERNATIVE RULEMAKING**

Radio Licensing, Inc. ("RLI"), licensee of Station KJCS(FM), Nacogdoches, Texas, through counsel, hereby timely files its reply to the Opposition to Petition for Reconsideration or Alternative Rulemaking filed by Wolverine Broadcasting ("Wolverine") on August 9, 2000.

The equities in this case are strong in RLI's favor. As discussed in the Petition for Reconsideration, RLI is an existing broadcaster on Channel 277 whose station is now short-spaced due to the Commission's erroneous cancellation of RLI's construction permit and

subsequent allocation of 278A<sup>1</sup> at Wolverine's request. But for the erroneous cancellation, the Allocations Branch would never have allotted 278A to Wolverine. Instead, a routine engineering study would have correctly shown that the channel was not available because it could not co-exist with RLI's existing and constructed C1 facility on Channel 277. In addition to harming an existing licensee that holds a valid permit, and timely built pursuant to it, the decision to allocate 278A to Centerville, Texas, harms the public interest. Were it implemented, the short-spacing created by the allocation would deny service to listeners who have been receiving KJCS's modified signal since May 1, 1997.

**Option Available to Accommodate Both Parties.** Because Wolverine has of course not yet built on the allotted Channel 278A, if it were to receive a permit for a new Centerville channel, it could readily utilize Channel 274A. This was the available channel it initially proposed in its April 12, 1999, Petition for Rulemaking. In that Petition for Rulemaking, Wolverine itself demonstrated that allotment of Channel 274A to Centerville would serve the public interest. And it was that channel that the Commission proposed to allot in its Notice of Proposed Rulemaking of July 16, 1999. Wolverine did not present any reason why allocation of 278A rather than 274A would be more advantageous or better serve the public interest. Nor did it attempt to do so in its Counterproposal or in the Opposition. Allocation of Wolverine's initially proposed Channel 274A to Centerville would allow both Wolverine and RLI to serve

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<sup>1</sup> See Reply to Opposition to Petition for Reconsideration, filed simultaneously with the present pleading and attached hereto as Exhibit A.

without requiring a choice between them.<sup>2</sup>

**Expression of Interest.** Wolverine argues that RLI's Alternative Petition for Rulemaking is flawed because it does not include an expression of interest from RLI in support of the proposal. The proposal is intended to reassert that there is an equivalent channel for Wolverine or any other applicant for Centerville. Wolverine did express interest in applying for 274A in its initial Petition for Rulemaking,<sup>3</sup> and has provided no basis for, much less an indication that, 274A, a channel equivalent to its currently allotted Channel 278, would not be satisfactory.

**Conclusion.** For the foregoing reasons, Radio Licensing, Inc., respectfully requests that the Allocations Branch dismiss Wolverine Broadcasting's August 9, 2000, Opposition to Petition for Reconsideration or Alternative Rulemaking on its merits as contrary to the public interest, grant RLI's Petition for Reconsideration, delete allotment of Channel 278A to Centerville, Texas, and substitute Channel 274A therefor. In the alternative, RLI again requests that the Allocations Branch initiate a rulemaking proceeding to substitute Channel 274A for 278A in Centerville,

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<sup>2</sup> Curiously, Wolverine does not explain why it filed the Opposition at all. Since all FM channels are presumptively equivalent, it is not apparent why Wolverine cares. Stated another way, it would seem to have no adverse interest at stake and therefore no standing to oppose the allotment it originally proposed.

<sup>3</sup> See Petition for Rulemaking at 2.

Texas, in order to accommodate all interested parties and better serve listeners in both Centerville and Nacogdoches.

Respectfully submitted,

RADIO LICENSING, INC.

By:   
Howard M. Weiss  
Jennifer Dine Wagner

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, Virginia 22209  
(703) 812-0400

August 21, 2000

**EXHIBIT A**  
**Reply to Opposition to Petition for Reconsideration**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In Re Cancellation of	)	
	)	
Construction Permit BPH-960725IF	)	File No. BPH-960725IF
To Modify Station KJCS(FM)	)	Reference No. 1800B3-JWR
Nacogdoches, Texas	)	
	)	
Radio Licensing, Inc., Licensee	)	

To: Chief, Audio Services Division, Mass Media Bureau

**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION**

Radio Licensing, Inc. ("RLI"), licensee of KJCS(FM), Nacogdoches, Texas, through counsel, hereby timely replies to the Opposition to Petition for Reconsideration, untimely filed by Wolverine Broadcasting ("Wolverine") on August 9, 2000. The Opposition was filed more than ten days after RLI's July 25, 2000, Petition for Reconsideration of the cancellation of KJCS's construction permit for a modification of facilities.<sup>1</sup> Wolverine offered no justification for this lateness. Because of its untimeliness, the Opposition is not entitled to consideration on its merits. However, Wolverine's arguments on the merits are unpersuasive in any event.

First, Wolverine argues that RLI is not entitled to reconsideration of its canceled construction permit because the permit expired on July 13, 1998. Wolverine is confusing

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<sup>1</sup> The deadline to file the Opposition was August 4, 2000. See 47 C.F.R. §1.106(g). Even with the additional three days allowed for filing a response to a pleading served by mail under 47 C.F.R. §1.4(h), Wolverine's opposition had to be filed no later than August 7, 2000.

expiration of a permit with cancellation of a permit. As the copy of the public notice supplied as Exhibit 2 to Wolverine's own pleading illustrates, the Commission did not cancel KJCS's construction permit until January 28, 1999, more than six months after the expiration date. See Opposition to Petition for Reconsideration at Exhibit 2. Thus, the permit's expiration date did not constitute a final action. The Commission's release of a public notice of the permit's cancellation more than six (6) months after the stated expiration date is evidence that *cancellation* rather than *expiration* constituted the last step before the permit would no longer be valid. Given the thirty-day reconsideration period required for such public notices under the Commission's rules, the permit was still viable until at least February 28, 1999. The Commission has unequivocally stated that the construction period for permits valid on February 16, 1999, is automatically extended until December 31, 2000. See Streamlining Memorandum Opinion and Order on Reconsideration, released October 6, 1999 (FCC 99-267), at paragraph 29. Therefore, RLI's construction permit to modify KJCS's facilities is viable, a request for extension was unnecessary, and RLI, as a current permittee, was entirely entitled to seek reconsideration on July 25, 2000, of the erroneous cancellation of a permit that does not automatically terminate until December 31, 2000.

Wolverine's second argument is that a letter sent by the Commission to a wrong address was sufficient notice of the KJCS construction permit cancellation. However, it is long-established that the Commission must provide personal notification of cancellation of a permit, and that misdirected mail does not constitute personal notice. See Gardner v. Federal Communications Commission, 530 F.2d 1086, 1092 (D.C. Cir. 1976) ("Gardner"). Wolverine's



claim that personal notification is unnecessary when a public notice has been published must be rejected because it is contrary to the clear holding in Gardner. See also Petition for Reconsideration at 5-6.

Wolverine's other attempts to demonstrate the sufficiency of the Commission's notice of the permit's cancellation are based purely on speculation and innuendo with no basis in Commission rules or policy, and therefore may not be considered.<sup>2</sup> Specifically, Wolverine urges that "RLI does not state whether it had failed to provide a forwarding address to the U.S. Postal Service. RLI also does not state whether it ever returned to the old address to pick up its mail." See Opposition to Petition for Reconsideration at 3. Commission rules do not require that a permittee provide a forwarding address to the U.S. Postal Service, and Commission rules certainly do not require a permittee to return to a former address to check whether misdirected mail has been received there. Commission rules do require that a permittee provide the Commission with a forwarding address, and RLI fully complied with that rule. See Petition for Reconsideration, Exhibit 3.

Finally, Wolverine argues that RLI "apparently maintained a presence" at the address to which the notice was mistakenly mailed "as witnessed by the fact that the main studio was eventually restored to that location." See Opposition to Petition for Reconsideration at 3-4.

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<sup>2</sup> It is well settled that issues supported by nothing more than speculation, conjecture, innuendo, and surmise will not be considered. See Folkways Broadcasting Co., Inc., 33 FCC 2d 806, 811 (Rev. Bd. 1972); West Central Ohio Broadcasters, Inc., 1 FCC 2d 1178 (Rev. Bd. 1965).

Wolverine's statement is purely speculative and a *non sequitur* – the fact that RLI returned to the studio later hardly proves it was receiving mail there in the interim. RLI provided the Commission with its new address in full compliance with Commission rules.

**Conclusion.** For the foregoing reasons, Radio Licensing, Inc., respectfully requests that the Audio Services Division dismiss Wolverine's Opposition to Petition for Rulemaking, grant Radio Licensing, Inc.'s Petition for Reconsideration of its cancellation of the KJCS(FM) construction permit, and reverse its erroneous cancellation of KJCS(FM)'s authorization.

Respectfully submitted,

RADIO LICENSING, INC.

By:   
Howard M. Weiss  
Jennifer Dine Wagner

Its Counsel

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Arlington, Virginia 22209  
(703) 812-0400

August 21, 2000

**CERTIFICATE OF SERVICE**

I, Vicki Collaro, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of the foregoing Reply to Opposition to Petition for Reconsideration was served this 21<sup>st</sup> day of August, 2000, via hand delivery and United States First Class Mail, postage prepaid, on the following:

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Vicki Collaro

\*By Hand

**CERTIFICATE OF SERVICE**

I, Vicki Collaro, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of the foregoing Reply to Opposition to Petition for Reconsideration or Alternative Rulemaking was served this 21<sup>st</sup> day of August, 2000, via hand delivery and United States First Class Mail, postage prepaid, on the following:

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